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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,292	11/18/2003	George K. Strohmaier	P22,888-E USA	6078

23307 7590 09/23/2005

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EXAMINER

CARR, DEBORAH D

ART UNIT	PAPER NUMBER
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1621

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/716,292

Applicant(s)

STROHMAIER ET AL.

Examiner

Deborah D. Carr

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18 is/are allowed.
- 6) ☒ Claim(s) 19-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1 August 2005 have been fully considered but they are not persuasive. The rejection of claims 32-46 under the judicially created doctrine of obviousness-type double patenting is maintained.

The indicated allowability of claims 19-31 is withdrawn and have been included in these rejections as seen below

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 19-21, 24, 26-28, 31-35, 37-41, 43-46 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of copending Application No. 10/431,318.

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4. Claims 19-35, 37-41, 43-46 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-13 of U.S. Patent No. 6,559,324.

5. Claims 19-46 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of copending Application No. 10/840,494.

Applicants' offer the following arguments regarding this rejection:

1. These three references do not teach saponification products which contain an unsaturated fatty acid concentration sufficient to form unstable calcium salt products when saponified in an ambient atmosphere;
2. The claims do not disclose or suggest a storage-stable calcium salt of unsaturated oil consisting essentially of one or more fish oils.

It is stated on page 11 of the specification, the free-flowing storage-stable fatty acid calcium salts containing between about 30 and about 80% by weight of one or more unsaturated fatty acids based on total weight, of which between about 20 and about 70% by weight are one or more polyunsaturated fatty acids.

US'324 states in col. 3, lines 56-57 the free-flowing unsaturated calcium fatty acid salt has a profile consisting essentially of about 50 to about 95% by weight of unsaturated C₁₆₋₂₂ fatty acids. Col. 4, lines 32-44 further define these unsaturated fatty acids to contain 1-6

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double bonds and specifically name omega-3 and omega-6 fatty acids and list fish oils as applicable marine sources.

US application 10/840,494 states on page 5, lines 10-13 of the specification the free-flowing unsaturated calcium fatty acid salt has a profile consisting essentially of about 40 to about 95% by weight of unsaturated C₁₆₋₂₂ fatty acids. Additionally page 6, lines 8-12 state that these unsaturated fatty acids to consist of 10 to 65% by weight of the total product weight consist of CLA, omega-3 & omega-6 fatty acids. On page 8 1st paragraph, it states that fish oils are applicable source of the unsaturated feedstock; listed in lines 7-9 are specific examples of marine oil sources.

US application 10/431,318 states on pages 2-3 of the specification the free-flowing unsaturated calcium fatty acid salt has a profile consisting essentially of about 40 to about 95% by weight of unsaturated C₁₆₋₂₂ fatty acids. Col. 4, lines 32-44 further define these unsaturated fatty acids to contain 1-6 double bonds and state that fish oils are applicable source of the unsaturated feedstock.

Based on applicants' criteria for the amount of unsaturated fatty acid need to produce an unstable calcium salt product when saponified in an ambient atmosphere and the need for the fatty acid to be of fish origin, these references meet these criteria.

Allowable Subject Matter

6. Claims 1-18 are allowed.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

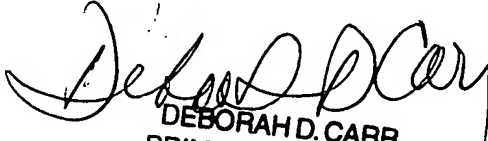
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah D. Carr whose telephone number is 571-272-0637. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DEBORAH D. CARR
PRIMARY EXAMINER

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